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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,578	10/02/2003	David L. Churchill	115-007	9298
26542 7590 05/17/2010 JAMES MARC LEAS Law Office Of James Marc Leas 37 BUTLER DRIVE S. BURLINGTON, VT 05403			EXAMINER WHITTINGTON, KENNETH	
			ART UNIT 2858	PAPER NUMBER
			MAIL DATE 05/17/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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In re Application of:  
David L. Churchill et al.  
Serial No.: 10/677,578  
Filed: October 2, 2003  
Attorney Docket No.: 115-007

DECISION ON PETITION  
TO WITHDRAW HOLDING OF  
ABANDONMENT

This is a decision on the Request for Reconsideration filed April 16, 2007, requesting reconsideration of the decision dismissing the petition under 37 CFR 1.181, filed October 10, 2006, to reset the shortened statutory period for reply to run from September 28, 2006, the date a copy of the non-final Office action of April 10, 2006, was obtained from the USPTO web site. The Request for Reconsideration is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment and accepting the reply filed October 10, 2006 as being timely filed.

The petition is GRANTED.

A non-final Office action was mailed on April 10, 2006, setting a three-month shortened statutory period for reply. A reply was filed along with a petition on October 10, 2006 to restart the shortened statutory period for reply. The petition was dismissed in a decision mailed March 30, 2006. A Notice of Abandonment was mailed on April 13, 2007.

Petitioner asserts that the Office action of April 10, 2006 was not received and a copy of the Office action was downloaded from the USPTO web site on September 28, 2006. To support the petition, petitioner states that "[a] search of the file jacket and the docket records indicates that the office communication was not received" and provides a "copy of the file jacket where the nonreceived office communication would have been entered had it been received and docketed." Petitioner states that he is a sole practitioner with no employee and has not maintained and does not maintain a docket record notebook listing all the mail received and the date of its receipt. Petitioner also asserts that he "personally review each item of received mail, records all received mail on the respective file jacket at the time it is received, faxes a copy of all received mail to applicant, Microstrain, Inc., enters the matter into a computerized calendar system, and enters the start and stop times into an Excel file for billing Microstrain, Inc. for the time spent reviewing and faxing the office action. A review of the computerize calendar system shows no entry. And a review of the Excel file shows no entry and that Microstrain was not billed for time for this. Thus

the mail from the PTO was not received by applicant's attorney." To further support and to corroborate the assertion of non-receipt of the Office action of April 10, 2006, an affidavit by Steven W. Arms, president of Microstrain, Inc., was submitted to describe the communication and recording procedures between the company and counsel James Marc Leas and to attest that a "review and search of the docket folder showed no fax office action" and "[t]he only copy of the office action dated April 10, in the folder is the one that was downloaded from the PTYO web site by Mr. Leas on September 28, 2006.

The evidence of record is accepted as sufficient to establish non-receipt of the Office action of April 10, 2006, and for a grantable petition.

The Notice of Abandonment mailed April 13, 2007 is hereby vacated and the holding of abandonment withdrawn.

The reply filed October 10, 2006 including an amendment to the claims is accepted as being timely filed.

The reply filed October 10, 2006 will be entered and an Office action will be issued in due course.

Inquiries regarding this decision should be directed to Hien H. Phan, Quality Assurance Specialist, at (571) 272-1606.

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Richard K. Seidel, TC Director  
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